IN THE

# Supreme Court of the United States

OCTOBER TERM, 1923.

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MISSOURI PACIFIC RAILROAD COMPANY (Appellant Below)..... Petitioner

vs. No. 313

R. L. HANNA (Appellee Below)..... Respondent

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## STATEMENT

Writ of certiorari was granted by this Court directed to the Supreme Court of Arkansas.

The facts are stated in the opinion of the Supreme Court of Arkansas as follows:

> "Appellee instituted suit against appellant in the Poinsett Circuit Court to recover damages in the sum of $2,000.00, on account of injuries received in alighting from its train at Gale, Illinois, through the alleged negligent act of its conductor in inviting and advising him to get off at that place. It was alleged that appellee was, at the time, accompanying a shipment of stock from Harrisburg, Arkansas, to St. Louis, Missouri, and in obedience to the advice of the conductor did alight from said train, with the result that he was thrown to the ground and seriously and permanently injured; that, at the time, it was so dark he could not tell how fast the train was moving and in debarking acted solely upon the advice of appellant's employee.
>
> Appellant filed an answer admitting that appellee was a passenger upon said train, accompanying a stock shipment to St. Louis, but denied all other material allegations in the complaint. Appellant also interposed the following defenses:

First, contributory negligence on the part of appellee in alighting from a moving train.

Second, the written contract for transportation which required the appellee to remain in the caboose, attached to the train, while the train was in motion, and to get on and off the caboose while the same was still.

The cause was submitted to the jury upon the pleadings, testimony, and instructions of the court which resulted in a verdict and judgment against appellant in the sum of $2000.00. From that judgment an appeal has been duly prosecuted to this court.

Appellee, plaintiff below, introduced testimony to the effect that early in January, 1921, he shipped two car loads of cattle, and one car load of hogs to St. Louis, Missouri, from Harrisburg, Arkansas; that he accompanied the live stock, riding by right as a passenger in the caboose; that when they were getting into Gale, Illinois, the conductor told the passengers to get off at the yard house and it would save them from walking through the dark yards; that it was then about nine o'clock and dark; that all of them got their baggage and followed the conductor to the door for the purpose of debarking; that while standing in the door, the conductor again told them to get off; that the conductor got off first, J. E. Arnold next, and appellee next, who, by reason of the rapid movement of the train, was thrown violently to the ground, some twelve feet distant, and injured; that at the time he stepped off he thought the train was barely moving.

Appellant introduced testimony to the effect that the conductor told the passengers, if the train stopped at the hill to get off so they would have time to eat; that the train was slowing down and the conductor remarked, "I believe we are going to stop at the hill"; that the engineer took slack and started down the hill, whereupon the conductor told the passengers not to

get off until they reached the bridge, about one hundred yards below the yard house; that the conductor himself, got off at the yard house in order to register the train in; that Arnold succeeded in getting off safely but that appellee fell in the attempt to do so. Appellant also introduced the bill of lading for the shipment of the live stock upon which appellant traveled, which contained a provision to the effect that the party in charge of the stock should remain in the caboose attached to the train while in motion, and to get on and off the caboose while the same was still." (R. 44-45.)

The contract of transportation was signed by the respondent (R. 22), and was a "drover's pass," with which the respondent was familiar as he had been engaged in shipping cattle over the same route for twelve years. (R. 9.)

The contract of transportation contained this further provision:

"No agent of this carrier has any authority to waive, modify or amend any of the provisions of this contract." (R. 22.)

## ASSIGNMENTS OF ERROR

The Supreme Court of Arkansas erred in holding:

I.

That the contract of transportation had no bearing upon the question of liability, and that its provisions did not constitute a defense.

II.

That the rule of "respondeat superior" applied, regardless of the provisions of the pass upon which the plaintiff was riding.

III.

That the violation of the provisions of the contract did not constitute a defense to plaintiff's alleged cause of action.

## BRIEF OF THE ARGUMENT

The Supreme Court of Arkansas refused to consider the provisions in the drover's pass which required the respondent to remain in the caboose while the same was in motion, and to "get on and off said caboose while the same is still," as a defense to plaintiff's cause of action for his alleged injuries sustained while getting off the caboose in violation of this provision of the pass upon which he was riding.

This Court has repeatedly considered stipulations of a similar nature as having bearing upon and applications to such cases. Drovers' passes are permitted under the same clause of the Interstate Commerce Act as are other passes, and, as to such other passes, this Court has not only considered such stipulations, but has sustained them as complete defenses.

K. C. S. Ry Co. v. Van Zant, (Jan. 2, 1923).

Charleston Railway Co. v. Thompson, 234 U. S. 576.

Boering v. Chesapeake Beach R.R. Co., 193 U. S. 442.

Northern Pacific R.R. Co. v. Adams, 192 U. S. 440.

The Act of Congress itself provides:

> "No common carrier subject to the provisions of this Act shall, after January first, Nineteen Hundred and Seven, directly or indirectly issue or give any interstate free ticket, free pass or free transportation for passengers, except * * * to necessary caretakers of live stock * * * ."

And in the case of K. C. S. Ry. Co. v. Van Zant, *supra*, this Court said:

> "The provision for passes, with its sanction in penalties, is a regulation of interstate commerce to the

completion of which the determination of the effect of passes is necessary. We think, therefore, free passes in their entirety are taken charge of,—not only their permission and use, but the limitations and conditions upon their use. Or, to put it in another way, and to specialize, the relation of their users to the railroad which issued them, the fact and measure of the responsibility the railroad incurs by their issuance, and the extent of the right the person to whom issued acquires, are taken charge of."

And the Court further said, after referring to other cases:

"Those cases were considered and applied as giving validity to the stipulations in passes issued under the Act in Charleston & W. C. R.R. Co. v. Thompson, 234 U. S. 576, according thereby freedom of transportation to the possessors of a pass, and giving assurance to the railroad company that its gratuity will not be given the consequences of compensated right and its incident obligations, and be a means of exacting from the company indefinite damages. * * * The pass proceeded from the Federal Act; it is controlled necessarily in its incidents and consequences by the Federal act, to the exclusion of state laws and state policies, and such is the effect of the cited cases."

The stipulations in such passes are to be tried according to the Act of Congress and the decisions of the Federal Court.

G. F. & A. Ry. Co. v. Blish Milling Co., 241 U. S. 190.

N. O. & N. E. R.R. v. Harris, 247 U. S. 367.

N. O. & N. E. R.R. v. Scarlett, 249 U. S. 528.

Charleston Ry. v. Thompson, 234 U. S. 576.

The pass for a caretaker of live stock, being included

in the same clause of the Interstate Commerce Act as other permissible passes, is to be considered as a "free" pass within the meaning of the Act, and is to be governed according to the Act and the decisions of this Court.

This Court in Charleston & W. C. R.R. Co. v. Thompson, *supra*, referring to such passes said:

> "To most of those enumerated, the pass would be gratuitous in the strictest sense, and when all that may receive them are grouped in a single exception, we think it plain that the statute contemplates a pass as gratuitous and in the same sense to all."

The transportation was interstate, and the stipulation was known to the respondent. In violating the stipulation he was injured. The stipulation expressly provided that no agent had authority to alter, to change, or modify its terms.

The Supreme Court of Arkansas erred in holding that the stipulation was abrogated by the suggestion of the conductor of the train, and that the suit was not for "breach of the contract," but was based upon the maxim "respondeat superior," which imputes liability to a master for the negligent acts of his servant.

The Circuit Court of Appeals for the Eighth Circuit, in the case of Smith v. Atchison, Topeka & Santa Fe Railroad Co., 194 Fed. 79, where the facts were similar to the facts in this case said:

> "The contract is by its terms tied to the tort, and the same law should be applied to the one as to the other."

In the case of Illinois Central Railroad Co. v. Jennings, 229 Ill. 608, in which the same question was involved as in this case, the Court said:

> "Appellee's testimony to the effect that the conductor was in charge of the train and was giving

orders in connection with the train, and had authority over the train does not tend to show that the conductor had apparent authority to alter the written contract or waive the provisions thereof by which appellee was required to ride in the caboose."

We respectfully submit that there is an irreconcilable conflict in the decisions of this Court, the Circuit Court of Appeals, the Supreme Court of Illinois, holding that such stipulations in passes are valid and binding, and the holding of the Supreme Court of Arkansas in this case to the effect that such a stipulation is not a defense, and that the judgment of the Supreme Court of Arkansas should be reversed.

Respectfully submitted,

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